

J.A. v Roman Catholic Diocese of Brooklyn

2023 NY Slip Op 34078(U)

November 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 519938/2021

Judge: Sabrina B. Kraus

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. SABRINA B. KRAUS PART 57
Justice
INDEX NO. 519938/2021
MOTION DATE 09/29/2021
MOTION SEQ. NO. 002

J.A.,

Plaintiff,

- v -

ROMAN CATHOLIC DIOCESE OF BROOKLYN, ST.
IGNATIUS ROMAN CATHOLIC CHURCH n/k/a ST.
FRANCIS OF ASSISI-ST. BLAISE CHURCH, and JESUIT
FATHERS AND BROTHERS a/k/a THE NEW YORK
PROVINCE OF THE SOCIETY OF JESUS a/k/a U.S.A.
NORTHEAST PROVINCE OF THE SOCIETY OF JESUITS,

DECISION + ORDER ON
MOTION

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25,
26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendants The New York Province of the Society of Jesus
and The USA Northeast Province of The Society of Jesuits, Inc. ("Province Defendants") in the
above captioned Child Victims Act ("CVA") action move for dismissal of the matter as against it
pursuant to CPLR 3211(a)(7) and CPLR 3211(a)(8).

Plaintiff filed a summons and complaint along with an order to show cause to proceed
anonymously on August 8, 2021. On August 12, 2021, Plaintiff filed an amended complaint to,
amongst other things, add the Province Defendants. On August 20, 2021, Plaintiff served Province
Defendants with the amended complaint and the order to show cause to proceed by pseudonym
that was filed on the original complaint. Plaintiff argues that Province Defendants had actual
notice of the identity of Plaintiff at the time the amended complaint was served and that failure to
amend and serve the order to show cause can be waived by the Court under CPLR 2001. Province

Defendants argue that because the complaint contained a pseudonym for Plaintiff the complaint was defective as it did not meet the requirements of CPLR 2101(c) and should be dismissed pursuant to CPLR 3211(a)(7) and CPLR 3211 (a)(8).

In determining dismissal under CPLR Rule 3211(a)(7), the “complaint is to be afforded a liberal construction” (*Goldfarb v Schwartz*, 26 AD3d 462, 463 [2d Dept 2006]). The “allegations are presumed to be true and accorded every favorable inference” (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). “[T]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Additionally, “[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

Province Defendants argue that a valid complaint must include the name of all parties pursuant to CPLR 2101(c) which states in part that “[i]n a summons, a complaint or judgment the title shall include the names of all parties[.]” This is addressed further in CPLR 2101(f) which states “[a] defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the court, and leave to correct shall be freely given. The party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within fifteen days after the receipt thereof, the party on whom the paper is served returns the paper to the party serving it with a statement of particular objections.” In the instant matter, the amended complaint was served on August 20, 2021, and Province Defendants filed the motion to dismiss on September 29, 2021, more than 15 days after service of the amended complaint. Further, in several instances courts have declined to dismiss cases that fail to strictly comply with CPLR 2101(c) including

where a demand did not include a caption and where the summons and complaint did not contain the venue, both of which are required under CPLR 2101(c) (*see A.M. Med., P.C. v State Farm Mut. Ins. Co.*, 22 Misc 3d 43 [App Term 2008]; *Forte v Long Is. Rail Rd.*, 143 Misc 2d 663 [Sup Ct, NY County 1989]).

In *E.K. v NY Hosp.-Cornell Med. Ctr.*, 158 Misc 2d 334 [Sup Ct, Orange County 1992], defendants argued that the complaint should be dismissed for lack of personal jurisdiction citing CPLR 2101(c) as in the instant motion. In that case, Plaintiff served a summons and complaint with Plaintiff's initials. The Court declined to dismiss the complaint because, like in the instant case, defendants had actual knowledge of plaintiff's identity (*id.* at 336). Province Defendants argue that in the instant matter they did not have actual notice of Plaintiff's identity until after the expiration of the CVA revival window. This however would be true even if the amended complaint was served with Plaintiff's full name on the complaint.

Finally, Province Defendants argue that once the amended complaint was filed the original complaint and pending motions no longer exist. Historically the pending motions would abate, however, courts now follow "the better rule [which] allows the moving party the option of withdrawing its motion or pressing it with regard to the amended pleading" (*Sholom & Zuckerbrot Realty Corp. v Coldwell Banker Commercial Group, Inc.*, 138 Misc 2d 799, 801 [Sup Ct, Queens County 1988]; *see (Cassissi v Yee*, 46 Misc 3d 552, 556 [Sup Ct, Westchester County 2014] [court considered the motion to strike and dismiss on the original complaint against the amended complaint]). Here, Plaintiff did not withdraw their order to show cause and no opposition was filed to the order to show cause. The Honorable Deborah A. Kaplan issued a decision on November 4, 2021, which granted Plaintiff's motion to file using a pseudonym (NY St Cts Elec Filing [NYSCEF] Doc No. 37). Notably this decision was after the filing and service of the

amended complaint. By issuing a decision, the Court clearly considered the order to show cause to file by pseudonym pending even after the amended complaint was filed.

Accordingly, it is hereby ORDERED that the motion is denied; and it is further

ORDERED that Province Defendants shall file and serve an answer to the amended complaint within twenty (20) days from service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall proceed with discovery pursuant to CMO No. 2, Section IX (B) (1) and a first compliance conference order within thirty (30) days after issue is joined.

This constitutes the decision and order of the Court.

11/14/23
DATE


SABRINA B. KRAUS, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE